

Office of Chief Counsel
Internal Revenue Service
memorandum

CC:LM:CTM:SEA:TL-N-7212-00
RWulf

COPY SENT VIA FACSIMILE [702-455-1237]

date: August 27, 2001

to: Willa Sue Wesley, Team Coordinator
Internal Revenue Service, LMSB
Las Vegas, Nevada

from: Associate Area Counsel (Large and Mid-Size Business
Seattle

subject: [REDACTED]
Form 872 Signature Blocks

Non-Precedential Statement

This memorandum should not be cited as precedent.

This memorandum responds to your oral request for advice regarding [REDACTED], a partnership. [REDACTED] purchased a corporate partner in the [REDACTED] partnership, and later caused the corporate partner to be merged into a limited liability company. You wish to obtain consents to extend the statutes of limitations relating to the flow-through partnership items.

I. FACTS

In [REDACTED], the year under audit, [REDACTED] had two corporate partners, but did not elect to be treated as a TEFRA partnership. One partner was [REDACTED]. The other partner was [REDACTED], one of several wholly-owned subsidiaries of [REDACTED], which filed a consolidated tax return. Therefore, some of the [REDACTED] income of [REDACTED] was reported on [REDACTED]'s return.

In [REDACTED], [REDACTED] was acquired by [REDACTED]. In [REDACTED], [REDACTED] merged into [REDACTED], which was also wholly-owned by [REDACTED]. Also in [REDACTED], [REDACTED] became New [REDACTED] in an F reorganization. It is now a wholly-owned subsidiary of [REDACTED], and is still a partner in [REDACTED]

According to a statement attached to the [REDACTED] return, the assets and liabilities of [REDACTED] Inc. were received by [REDACTED].

[REDACTED] has not provided all of the documents you requested, so you have been unable to ascertain:

- (i) how [REDACTED] merged into an [REDACTED], while its assets and liabilities were assumed by [REDACTED]; or
- (ii) if [REDACTED] elected to be treated for tax purposes as a partnership, a corporation or a disregarded entity.

You do not believe that we can ascertain the correct answers to the questions before the statute runs on [REDACTED]. While you do not believe [REDACTED] designated another member to act as agent in its place (Treas. Reg. §1.1502-77(d)), you have not been able confirm this belief.

On [REDACTED], [REDACTED] acquired [REDACTED] and changed its own name to [REDACTED].

You plan to examine the [REDACTED] partnership return and the [REDACTED] corporate consolidated return, including its share of the [REDACTED] partnership items. You do not plan to audit the [REDACTED] return of [REDACTED], except with respect to treatment of [REDACTED] partnership items.

Given these facts, you asked us how to identify the taxpayers (first line on the consent forms), who should sign and in what capacity.

II. DISCUSSION

A. TEFRA

The first issue is whether TEFRA applies. Small partnerships are excepted from TEFRA unless a valid election is made under I.R.C. § 6231(a)(1)(B)(ii); Treas. Reg. § 301.6231(a)(1)-1T(b). A small partnership has ten or fewer partners, and for taxable years ending after August 5, 1997, a C corporation may be a partner in a small partnership. I.R.C. § 6231(a)(1)(B)(i).

[REDACTED] had two corporate partners. Both the partnership's and the partners' tax years ended on [REDACTED], and the partnership did not elect to be covered by TEFRA. Therefore, TEFRA does not apply, and all partnership adjustments must be made directly to each individual partner's return. Further, the limitations periods for adjusting partnership items are determined with respect to each individual partner.

B. NAMES ON CONSENTS

Another issue relates to which entities should be named on the consents. As a general rule, the common parent of a consolidated group is "the sole agent for each subsidiary in the group" and "no subsidiary has authority to act for or to represent itself in any such matter." Treas. Reg. § 1.1502-77(a). Here, the partner [REDACTED] was a subsidiary in the [REDACTED] consolidated group.

Of course, [REDACTED] merged into [REDACTED] and can no longer sign a consent. Under the "check the box" rules, [REDACTED] may be taxed as a partnership, corporation or disregarded entity. It is not a partner because [REDACTED] is the only owner. You do not know whether [REDACTED] chose to be taxed as a partnership, corporation or disregarded entity, and therefore the statute must be protected under both scenarios.

1. Corporation

If [REDACTED] elected to be treated as a corporation for federal income tax purposes, then [REDACTED] would be an alternative agent and could sign the Form 872 with respect to the [REDACTED] liability as partner. Temp. Reg. 1.1502-77T(a)(4)(ii).

2. Disregarded entity

If [REDACTED] elected to be treated as a disregarded entity, then the merger of [REDACTED] into [REDACTED] terminated the common parent as well as the common parent's agency authority. In this situation, New [REDACTED] must execute a Form 872 with regard to its several liability for the [REDACTED] consolidated tax of the [REDACTED] consolidated group. You should also obtain a Form 872 from [REDACTED] with regard to its state law liability as successor to [REDACTED]. It would be liable for all of [REDACTED]'s liabilities, one of which is [REDACTED]'s several liability under Treas. Reg. 1.1502-6 for the [REDACTED] consolidated tax of the [REDACTED] consolidated group.

III. SUMMARY OF RECOMMENDATIONS

Based on the above, we recommend you obtain three Forms 872 as follows:

1. [REDACTED] (for its own partnership interest)

The caption (top of the Form 872) should state:

[REDACTED] (EIN ???), formerly known as [REDACTED].

The signature block should appear as follows:

[REDACTED] (EIN ???), by [name of a [REDACTED]
[REDACTED] officer, title].

2. [REDACTED]'s Form 872

The caption (top of the Form 872) should state:

[REDACTED] (EIN ???), as successor in interest to
[REDACTED] (EIN ???) and as agent
for the [REDACTED]
consolidated group.

The signature block should appear as follows:

[REDACTED] (EIN ???), by [name of a [REDACTED]
[REDACTED] officer, title].

At the bottom of the front page of the form, write:

"This is with respect to [REDACTED]'s
liability as partner in the [REDACTED]
partnership for tax year [REDACTED].
(EIN ???) was a member of [REDACTED]
[REDACTED] consolidated group in tax year [REDACTED]."

3. New [REDACTED]'s Form 872

The caption (top of the Form 872) should state:

New [REDACTED] (EIN xx?) formerly known
as [REDACTED] (EIN xx?)

The signature block should appear as follows:

New [REDACTED] (EIN xx?), by [name of a
New [REDACTED] officer, title].

At the bottom of the front page of the form, write:

"This is with respect to [REDACTED]'s
liability as partner in the [REDACTED]
partnership for tax year [REDACTED]."

IV. PROCEDURAL MATTER

The taxpayers should be notified of their rights under new I.R.C. § 6501(c)(4)(B), which provides that the Service shall notify the taxpayers of their right: 1) to refuse to extend the period of limitations; 2) to limit such extension to particular issues; or 3) to limit the extension to a particular period of time. This notice must be provided by field personnel each time an extension is requested. The legislative history of this provision states that Congress believed that taxpayers should be fully informed of their rights with respect to the statute of limitations on assessment.

If our understanding of the facts (e.g., the relationships between the entities, the entities' exact names) is incorrect, please let us know.

If you have any questions, or if you should need any additional information, please contact us at 206-220-5951.

DISCLOSURE STATEMENT

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse effect on privileges, such as the attorney client privilege. If disclosure becomes necessary, please contact this office for our views.

ROBERT F. GERAGHTY
Associate Area Counsel
(Large and Mid-Size Business)

By: _____
ROY WULF
Attorney (LMSB)